Supreme Court, U.S.
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No. 91-1428

In the Supreme Court of the United States

OCTOBER TERM, 1991

PAUL MIDDLETON,
PETITIONER,

v.

CROWLEY TOWING AND TRANSPORTATION COMPANY,
RESPONDENT.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Statement of the Case

On June 7, 1990, the Petitioner, a seaman, filed a personal injury action against the Respondent pursuant to the General Maritime Law of the United States and the Jones Act.[1] The District Court for the Western District of Louisiana ("District Court") was called upon to rule on a Motion for Summary Judgment filed by Respondent on January 2, 1991. The Motion requested dismissal of the action on the basis that Petitioner's exclusive remedy against the Respondent is under the Puerto Rico Workmen's Accident Compensation Act ("PRWACA"),

[1] Pursuant to Supreme Court Rule 29.1, it is stated that Respondent, Crowley Towing & Transportation Company, is a wholly owned subsidiary of Crowley Maritime Corporation.

11 P.R. Laws Ann. §§ 1-42, and therefore no action lied against it under the Jones Act or the General Maritime Law of the United States.

Discovery mechanisms utilized by the parties during proceedings before the District Court included a First Set of Interrogatories and Request for Production of Documents submitted by Petitioner. The Respondent, on the other hand, took Petitioner's deposition on October 30, 1990.

The material facts concerning Respondent's Motion for Summary Judgment were obtained directly from Petitioner's sworn deposition. Moreover, the most important material facts were specifically stipulated by the parties in open court on the day the District Court heard oral argument on the Motion, February 21, 1991. Oral argument was necessary because on January 23, 1991, Petitioner filed a Motion and Memorandum in Opposition to Defendant's Motion for Summary Judgment where, by affidavit, Petitioner tried to recant his previous sworn deposition testimony. Accordingly, during the oral argument held before the District Court on February 21, Petitioner's counsel agreed that everything that the Petitioner stated during his sworn deposition of October 30, was true and correct. The most important material facts specifically stipulated by the parties were the following:

1. That [Respondent] is a Louisiana corporation engaged in the ocean towing and transportation business and is duly authorized to do business in the Commonwealth of Puerto Rico.

2. [Petitioner] went to Puerto Rico, rented a motel room, spent three weeks there seeking a job. He was finally hired by them on January 12, 1990. He would thereafter rent rooms in Puerto Rico by the week or day during his days off.

3. [Petitioner], a member of the Seafarer's International Union, pursued employment with Defendant individually and independently from the Union, as he voluntarily traveled to San Juan, Puerto Rico, and solicited employment with the Respondent based outside Puerto Rico.[2]

[2] Although the material fact makes the reference "based outside of Puerto Rico", it is undisputed that Respondent is authorized, and actually doing

4. On March 29, 1990, [Petitioner] [reported that he] suffered injuries to his body while within the course and scope of his employment aboard [Respondent's] vessel. He was at the time helping to move a barge in San Juan Harbor, Puerto Rico, prior to embarking on a voyage.

5. [Petitioner] was insured pursuant to the [PRWACA] during his entire period of employment with [Respondent] in San Juan, Puerto Rico.

6. On April 5, 1990, [Respondent] prepared an accident report, and Plaintiff thereafter attended his initial medical evaluation with the Puerto Rico State Insurance Compensation Fund on April 6, 1990.

7. [Petitioner] resided in the Commonwealth of Puerto Rico from late December 1989, through April of 1990, when he decided he would return to Lake Charles, Louisiana, prior to April 23, 1990, when he was scheduled for medical re-evaluation with the Puerto Rico State Insurance Compensation Fund.

Based on the above stipulated facts, and others derived directly from Petitioner's sworn deposition, the District Court concluded through Memorandum Ruling of February 21, 1991, that Respondent was an employer insured pursuant to the PRWACA and Petitioner reportedly suffered an accident while he was residing in Puerto Rico and working on one of Respondent's vessels within the territorial navigable waters of Puerto Rico. Accordingly, the Court determined that Petitioner's case did not present a genuine issue of fact, and that as a matter of law, Respondent was entitled to summary judgment because the PRWACA displaced the Jones Act and the General Maritime Law of the United States as the only remedy available to Petitioner against Respondent herein. (Petition App. p. 8).

The ruling of the District Court was ratified by the Court of Appeals for the Fifth Circuit ("Court of Appeals") through unpublished decision of November 4, 1991. (Petition App. p. 20).

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business in the Commonwealth of Puerto Rico. In fact, the District Court when reading for the record the undisputed facts, specifically mentioned "plaintiff either lived in various places on the Island of Puerto Rico, or on vessels owned by Defendant and home ported at San Juan, Puerto Rico. . . ."

Reasons for Denying the Writ

The instant Petition for Writ of Certiorari, does not entail special and/or important reasons that merit review by this Honorable Court. The Petition simply seeks review of a factual determination by the District Court, which determination was reviewed and ratified by the Court of Appeals.

Through the questions presented by Petitioner in its Petition for Writ of Certiorari, it is obvious that Petitioner is not challenging the applicability of the PRWACA as the sole remedy for seamen residing in Puerto Rico, and injured during the course of their employment within the territorial waters of Puerto Rico, against an employer insured under the provisions of the PRWACA. Rather, Petitioner challenges a factual finding and decision, within the lower courts' jurisdiction, to the effect that he was residing in Puerto Rico at the time of the alleged incident wherein he injured himself. (Petition at p. i). Said determination, however, is supported by competent, substantial and uncontroverted evidence. Moreover, the finding regarding Petitioner's residence has been concurred in by both the district and intermediate appellate courts. *Norton Co.* v. *Department of Revenue of State of Ill.*, 340 U.S. 534 (1951) (the Supreme Court shall not re-examine, as a court of first instance, findings of fact supported by substantial evidence).

From a different perspective, the instant Petition does not involve a case where a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for exercise of this Court's power of supervision. In addition, the instant Petition does not involve a decision by a United States court of appeals regarding an important question of federal law which has not, but should be, settled by this Court, nor does it involve the decision of a federal question that in a way conflicts with applicable decisions of this Court.

Argument

It is a well settled principle that the Congress of the United States may not delegate the States with its constitutional power to legislate as to rights and liabilities within the maritime jurisdiction. *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205 (1917); *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149 (1920). The Commonwealth of Puerto Rico, however, is not a State. Rather, the Commonwealth of Puerto Rico is considered a territory of the United States. *Americana of Puerto Rico, Inc.* v. *Kaplus*, 368 F.2d 431 (3rd Cir. 1966), *cert. denied*, 368 U.S. 943 (1966). Congress, therefore, in the exercise of its constitutional power under Article IV, §3, cl. 2, may legislate and make all needful rules and regulations respecting the Commonwealth of Puerto Rico, and the Government of Puerto Rico, therefore, enjoys the powers that the Congress from time to time has seen fit to give it. *Fonseca* v. *Prann*, 282 F.2d 153 (1st Cir. 1967), *cert. denied*, 365 U.S. 860 (1961).

Back in 1917, Congress conferred full power of control to the Government of Puerto Rico over its local, navigable waters. Sections 7, 8, and 37 of the Second Puerto Rico Organic Act, 39 Stat. 951, 954, 964.[3]

Puerto Rico has exercised the power delegated by Congress and has enacted legislation inconsistent with the Jones Act and the General Maritime Law of the United States insofar as its PRWACA grants absolute employer immunity for accidents occurring within the territorial navigable waters of Puerto Rico. *See Lastra* v. *New York & Porto Rico S.S. Co.*, 2 F.2d 812 (1st Cir. 1924); *Guerrido* v. *Alcoa Steamship Co.*, 234 F.2d 349 (1st Cir. 1956); *Fonseca* v. *Prann*, *supra*.

Accordingly, employer immunity within the territorial navigable waters of Puerto Rico has existed since 1924 as initially set forth in *Lastra* v. *New York & Porto Rico S.S. Co.*, *supra*.

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[3] Currently in effect as part of the Puerto Rico Federal Relations Act, Law 600, 64 Stat. 319; 48 U.S.C. §731, *et seq*. Refer specifically to §§748, 749 and 821.

Moreover, said immunity has been consistently ratified by the Court of Appeals for the First Circuit and, thus, remains undisturbed to date. *See, Guerrido* v. *Alcoa Steamship Co., supra; Fonseca* v. *Prann, supra; Alcoa Steamship Co.* v. *Perez Rodriguez*, 376 F.2d 35 (1s Cir. 1967), *cert. denied*, 389 U.S. 905 (1967); *Manuel Caceres* v. *San Juan Barge Co.*, 520 F.2d 305 (1st Cir. 1975); *Garcia* v. *Friesecke*, 597 F.2d 284 (1st Cir. 1979), *cert. denied*, 444 U.S. 940 (1979); *Lusson* v. *Carter*, 704 F.2d 646 (1st Cir. 1983); *Perez De La Cruz* v. *Crowley Towing & Transportation Co.*, 807 F.2d 1084 (1st Cir. 1986), *cert. denied*, 481 U.S. 1050 (1987).

All the above cited cases extending employer immunity within the territorial waters of Puerto Rico establish consensus regarding four factors that shall be considered in determining the existence of employer immunity under the PRWACA, as follows:

1. Whether the employer is authorized by the Commonwealth of Puerto Rico to do business in Puerto Rico;
2. Whether the employer insured its employees under the PRWACA;
3. Whether the accident occurred within the territorial waters of Puerto Rico; and
4. Whether the seaman was a resident of Puerto Rico at the time of the accident.

See generally, Lusson, supra, 704 F.2d at 650; *Perez De La Cruz, supra*, 807 F.2d at 1085-86.

I. The Petitioner Seeks Review Of A Determination Of Fact By The Lower Courts

The Petitioner does not challenge the existence of the first three factors that shall be considered in determining the existence of employer immunity under the PRWACA. To be sure, these factors are clearly established through stipulation by the

parties. The Petitioner contends, however, that he was not a resident of Puerto Rico at the time of the accident as he did not obtain housing, an address, or such other contacts with Puerto Rico as to establish a relationship sufficient to make him a resident of Puerto Rico. (Petition at pp. 15-16).

All material facts, some of them specifically stipulated by Petitioner during proceedings before the district court, and others undisputed by reason of being part of Petitioners sworn deposition, establish that Petitioner was initially employed in San Juan, Puerto Rico. Moreover, Petitioner's contact with Puerto Rico was not of a casual or temporary nature. Petitioner's presence in Puerto Rico instead was intentional as he took upon himself to travel to, and seek employment in, San Juan, Puerto Rico. He was residing in San Juan Puerto Rico, from late December of 1989 to late April of 1990. San Juan was his place of abode and base of operations, from where he would embark in defendant's vessels primarily on San Juan, St. Thomas and St. Croix runs, as well as for harbor services in San Juan. In fact, as Petitioner himself concedes, it is not until late April, 1990, once he learned that he was unfit to return to his employment with Respondent, that he began to make arrangements to return, and indeed traveled to Lake Charles, Louisiana. (See Petition at p. 7; App. 14).

The only way that a seaman does not comply with the residence requirements for purposes of the employer immunity under the PRWACA is when he is employed outside of Puerto Rico and his only contact with Puerto Rico is when his vessel enters the waters of Puerto Rico for a temporary visit in the course of its voyage. *See generally, Alcoa Steamship Co.* v. *Velez*, 376 F.2d 521, 523 (1st Cir. 1967). Petitioners position is clearly the opposite. (Petition, App. 23). Accordingly, the District Court and the Court of Appeals were correct in granting, and/or affirming the ruling granting, Respondent's Motion for Summary Judgment. Said ruling was premised on stipulated facts which flow directly from Petitioners sworn deposition, and establish all factors necessary to afford employer immunity including Petitioner's residence in Puerto Rico.

Even though Petitioner specifically refers to the residence requirement as the question presented for review (Petition at p. i), within the context of the argument in his Petition, he contends that residence is only one of the factors to be considered in affording employer immunity under the PRWACA (Petition at p. 16). He further contends that the factors set forth in *Lauritzen* v. *Larsen*, 345 U.S. 571 (1953) shall be considered in weighing the interest of Puerto Rico in applying its Workmen's Compensation Act. (Petition at p. 14). Moreover, he submits that his relationship with the United States is such that he does not fall within that category of seamen limited to recovery of workmen's compensation under Puerto Rico's laws. (Petition at p. 10).

Petitioner's contention is ill conceived. His argument seeks to establish a difference between a Puerto Rico citizen and/or seaman, and the American seaman.[4] The District Court and Court of Appeals already addressed the argument. In this regard, the District Court properly acknowledged that none of the cases determining the applicability of the employer immunity under the PRWACA resorted, in their determination, to the factors outlined by *Larsen*. Said court, nonetheless, considered the expanded list of factors set forth in *Larsen*, and determined that Puerto Rico's interest in applying its Workmen's Compensation Act outweighed any potential interest of the United States in having its law applied. (Petition App. pp. 15-18). The Court of Appeals, on the other hand, determined that Petitioner's contention was misguided as the instant case did not involve a determination pertinent to choice of law between American and *foreign* law. (Petition App. p. 21). Absence of a determination pertinent to choice of law between American and *foreign* law was also noted by the District Court. (Petition App. p. 15).

If a seaman from the United States, as is the case with Petitioner, voluntarily avails and derives benefit from the Puerto

[4] None of the cases that interpret the employer immunity under the PRWACA establish a distinction between a seaman born in Puerto Rico and another born in the United States. In fact, they both are American Citizens.

Rican forum in that he seeks employment in Puerto Rico, is physically present for a period of over sixty (60) days in Puerto Rico, and works for a corporation authorized to do business in Puerto Rico and insured under the PRWACA, he cannot claim that he is "more American", and thus, entitled to greater or different benefits than any other seaman employed in Puerto Rico with the same employer. Furthermore, said seaman cannot rightfully argue that he is entitled to relief under the admiralty and maritime law of the United States regardless of the provisions of local legislation enacted pursuant to Congressional authorization.

II. The Petition Does Not Otherwise Present Special Or Important Reasons Which Merit Issuance Of The Writ

The decision of the Court of Appeals for the Fifth Circuit is not in conflict with other courts of appeals. On the contrary, as was previously discussed, it follows the unbroken line of cases of the Court of Appeals for the First Circuit dating back to 1924 in which said appellate court has held that the United States' Congress gave Puerto Rico the power to supplant federal maritime law in favor of the PRWACA regarding accidents of seamen, that occur within the territorial waters of Puerto Rico, when the seamen reside in Puerto Rico, and their employer is insured under the PRWACA. *See Perez De La Cruz, supra*, 807 F.2d at 1087.

Finally, the instant Petition is not intended to review a departure by the District Court and/or the Court of Appeals regarding the accepted and usual course of judicial proceedings. Moreover, the instant Petition does not present an important question of federal law that should be settled by this court. In this regard, there is no conflict among the circuits or other reasons that counsel review by this Honorable Court. In addition, the instant case does not involve a decision in conflict with decisions by this Honorable Court.

Conclusion

The present case presents no issue of consequence for review by this Honorable Court. Petitioner simply seeks review of a factual finding and decision within the lower district and appellate courts' jurisdiction, supported by competent and substantial evidence. In light of the above, the Petition for Writ of Certiorari should be denied.

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